

Application/Control No.: 10/030,268  
Art Unit: 1614

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### REMARKS

Claim 16 has been amended. Support for the amendment can be found on page 7, lines 1-15 of the specification as filed. New claims 33-37 have been added. Support for these claims can be found in originally filed claims 1-7 and 14. No new matter is introduced by the current amendments.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)**

Claims 16-21, 28 and 31-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over PCT/IB97/01634 to Rudin et al, in view of US Patent No. 4,933,173 to Bristow et al. It is the Examiner's position that one of ordinary skill in the art would have been motivated to combine the above references because Bristow et al. teach that hydroxyapatite and casein are compatible and further that casein has anti-caries properties, both of which are reasons to add casein to a toothpaste and cause one of ordinary skill in the art to expect a better product. Thus, the claimed invention of the composition was within the ordinary skill in the art to make and use at the time it was made and was as a whole, *prima facie* obvious. The Examiner also stated that Applicant's Declaration filed 27 February 2006 was fully considered but was not found persuasive because the Declaration does not teach a product that is unexpected in light of Bristow et al. Specifically, Bristow teaches that hydroxyapatite and casein are compatible and further that casein has beneficial properties when included in an oral care product such as a toothpaste. Therefore, one of ordinary skill in the art would have found it obvious to combine both in a paste, which is considered to be described by the claim language "a microscopically heterogeneous aggregate".

Applicants submit that the claims as amended are not obvious over the combined teachings of Rudin and Bristow for the following reasons. Firstly, the claims as amended do not recite the presence of casein. Secondly, Bristow teaches away from combining the teachings therein with those of Rudin because Bristow teaches a substantially fluorine free anti-caries oral composition comprising finely-divided hydroxyapatite and an anti-caries agent selected from water-soluble casein materials and sodium trimetaphosphate at column 1, line 67 to column 2, line 3. A person of ordinary skill in the art, upon reading the

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teachings of Bristow, would be discouraged from combining casein and fluorine-containing materials in making an anti-caries oral composition. A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. *In re Gurley*, 31 USPQ 2d 1130, 1131 (Fed. Cir. 1994).

#### **DOUBLE PATENTING**

Claims 16-22, 28 and 30 stand provisionally rejected under the judicially created doctrine of double patenting over claims 8-10 and 13 of copending Application Nos. 09/868,379; 10/465,157; 09/868,379; 10/297,889; and 10/297,842. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

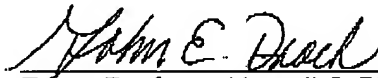
Applicants will address the provisional Double Patenting rejection if and when the instantly pending claims are allowed.

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**CONCLUSION**

Applicants believe that the foregoing is completely responsive to the Office Action mailed on 04/06/2006. Applicants respectfully request reconsideration and allowance of all pending claims in view of the amendments and remarks above. Should any fees be due for entry and consideration of this Amendment that have not been accounted for, the Commissioner is authorized to charge them to Deposit Account No.04-1406.

Respectfully submitted,



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